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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CNAN GROUP S.P.A.,

Plaintiff,

-against-

**HASSAN ALI RICE EXPORT CO. d/b/a
IGEN SEA SHIPPING,**

Defendant.

**DECLARATION OF
KEITH W. HEARD
IN OPPOSITION TO
DEFENDANT'S MOTION
TO VACATE AN
ATTACHMENT**

Electronically Filed

08 CV 1201 (PAC)

STATE OF NEW YORK)
)
) ss:
COUNTY OF NEW YORK)

KEITH W. HEARD, under penalty of perjury of the laws of the United States,
declares as follows:

1. I am an attorney admitted to practice before the Courts of the State of New York and before this Honorable Court. I am a partner in the law firm of Burke & Parsons, counsel for plaintiff CNAN Group S.p.a., an agency or instrumentality of the Algerian government. I support this Declaration to place before the Court copies of

various documents in opposition to defendant Hassan Ali Rice Export Company's motion to vacate a Rule B maritime attachment.

2. Attached as Exhibit A to this declaration is a copy of Judge Pauley's Memorandum and Order in *Flame Maritime Limited v. Hassan Ali Rice Export Company*, 07 Civ. 4426 (S.D.N.Y. August 31, 2007).

3. Attached as Exhibit B to this declaration is a copy of the Verified Complaint in *Speybridge Shipping Company Ltd. v. Igen Sea Shipping and Hassan Ali Rice Export Company*, 05 Civ. 7458 (DC).

4. Attached as Exhibit C to this declaration is a copy of the "Stipulation and Order of Settlement and Dismissal of defendant Hassan Ali Rice Export Company's Motion to Vacate Attachment" in *Speybridge Shipping Company Ltd., supra*.

5. Attached as Exhibit D to this declaration is a copy of the Verified Complaint in *Salam International Transport & Trading Co. v. Igen Sea Shipping and Hassan Ali Rice Export Co.*, 06 Civ. 2841 (RMB).

6. Attached as Exhibit E to this declaration is a copy of the "Declaration of Aziz Ashiq Ali in Support of Hassan Ali Rice Export Co.'s Motion to Vacate Plaintiff's Rule B Attachment" in *Salam International, supra*.

7. Attached as Exhibit F to this declaration is a copy of the "Declaration of Captain Mazen Baddar" in opposition to defendant HAREC's motion to vacate the attachment in *Salam International, supra*.

8. Attached as Exhibit G to this declaration is a copy of the "Declaration of Abdullah Hashwani in Support of Hassan Ali Rice Export Co.'s Motion to Vacate Plaintiff's Rule B Attachment" in *Salam International, supra*.

9. Attached as Exhibit H to this declaration is a copy of the "Declaration of Sheikh Dildar Hussain" (with attached photographs) in opposition to defendant HAREC's motion to vacate the attachment in *Salam International, supra*.

10. Attached as Exhibit I to this declaration is a copy of an Internet screen print from "Jamal's Yellow Pages of Pakistan" showing no telephone listing for Igen Sea Shipping in Karachi.

11. Attached as Exhibit J to this declaration is a copy of the "Declaration of Klaus C.J. Mordhorst" in opposition to defendant HAREC's motion to vacate the attachment in *Salam International, supra*.

Declaration

I declare under penalty of perjury that the foregoing is true and correct and has been executed on July 10, 2008..

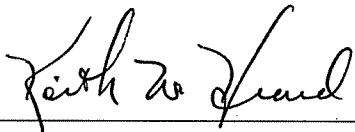
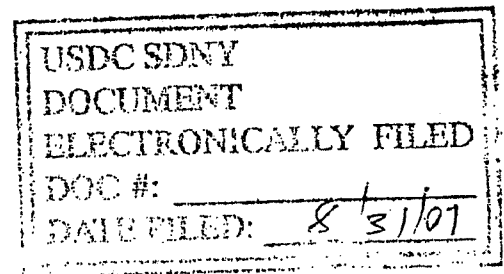
By 
Keith W. Heard

EXHIBIT A



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FLAME MARITIME LIMITED,

Plaintiff,

-against-

HASSAN ALI RICE EXPORT COMPANY,

Defendant.
-----X

07 Civ. 4426 (WHP)

MEMORANDUM AND ORDER

Defendant Hassan Ali Rice Export Company ("Hassan") moves pursuant to Fed. R. Civ. P. Supp. Rule E(4)(f) to vacate this Court's May 31, 2007 ex parte order of a maritime attachment and garnishment (the "Order"). Alternatively, Hassan seeks to reduce the security of Plaintiff Flame Maritime Limited ("Flame") pursuant to Supp. Rule E(6). For the following reasons, Hassan's motion is denied in part and granted in part.

BACKGROUND

On January 29, 1999, Hassan tendered white rice to Flame for transport from Karachi, Pakistan to Moroni, Comoros Islands aboard the M/V Junior M. (Declaration of Owen Duffy, dated Aug. 13, 2007 ("Duffy Decl.") ¶ 11.) Hassan allegedly failed to pay demurrage in the amount of \$59,721. (Duffy Decl. ¶ 13.) Flame initiated arbitration against Hassan in London, England seeking to recover the unpaid demurrage. (Duffy Decl. ¶ 14.) On December 21, 1999, the arbitral panel ordered Hassan to pay Flame \$55,988,77 and interest at an annual rate of 7.5% from May 21, 1999 until the date of satisfaction (the "Arbitration Award"). (Duffy Decl. ¶ 18.) On February 22, 2000, Flame filed an action to enforce the Arbitration Award

against Hassan in Karachi, Pakistan. (Duffy Decl. ¶ 22.) Nearly six years later, the Pakistani High Court entered a decree on January 23, 2006 enforcing the Arbitration Award in the amount of \$55,988.77 plus £4,800 (the “Pakistani Judgment”). (Duffy Decl. ¶ 23.) The Pakistani Court did not confirm the award of interest because it was contrary to Islamic law. (Duffy Decl. ¶ 24.) Flame filed an application to execute the Pakistani Judgment, and Hassan appealed it. (Duffy Decl. ¶¶ 25-26.) The High Court scheduled an appellate conference for May 19, 2007, but later adjourned it sine die. (Duffy Decl. ¶¶ 27-28.) No further proceedings have occurred in the Pakistani courts.

On May 30, 2007, Flame filed this maritime action against Hassan seeking an attachment pending the outcome of Hassan’s appeal. This Court issued the Order, which authorized Flame to attach up to \$150,000 of Hassan’s assets located within this district. Pursuant to the Order, Flame attached two electronic fund transfers in the amounts of \$62,200 and \$60,000, respectively. (Duffy Decl. ¶¶ 34-35.)

DISCUSSION

Hassan argues that the Attachment should be vacated because Flame has full security for its claims. Hassan alternatively contends that, if an order of vacatur does not issue, the amount of security should be reduced.

I. Standard for Vacatur

Rule E(4)(f) of the Supplemental Rules provides: “[W]henver property is arrested or attached, any person claiming an interest in it shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules.” Fed. R.

Civ. P. Supp. Rule E(4)(f); Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd., 460 F.3d 434, 445-46 (2d Cir. 2006); Winter Storm Shipping Ltd. v. TPI, 310 F.3d 263, 272 (2d Cir. 2002); Sea Transp. Contractors, Ltd. v. Indus. Chimiques du Senegal, 411 F. Supp. 2d 386, 390 (S.D.N.Y. 2006). To sustain any attachment, the plaintiff must demonstrate that “(1) it has a valid prima facie admiralty claim against the defendant; (2) the defendant cannot be found within the district; (3) the defendant’s property may be found within the district; and (4) there is no statutory or maritime law bar to the attachment.” Aqua Stoli, 460 F.3d at 445. Courts may also vacate an attachment in certain limited circumstances where equity so demands. See Aqua Stoli, 460 F.3d at 444. Specifically, vacatur is proper if “the plaintiff has already obtained sufficient security for the potential judgment, by attachment or otherwise.” Aqua Stoli, 460 F.3d at 445.

Because it is uncontested that the formal requirements for attachment have been satisfied by Flame, the only possible grounds for vacatur are equitable. Hassan argues that the Order should be vacated because it provided Flame with full security by furnishing a bank guarantee for the amount of the Pakistani Judgment. However, because Hassan has not proffered evidence of such a guarantee, the attachment cannot be vacated on this ground. See Mardas Marmara Deniz Isletmeciligi A.S. v. Fast Shipping & Trading Co., 07 Civ. 179 (PKL), 2007 WL 2229058, at *4 (S.D.N.Y. Aug. 2, 2007) (party seeking to vacate attachment on equitable grounds bears the burden of demonstrating sufficient security exists for potential judgment).

II. Attachment Reduction

In the alternative, Hassan seeks a reduction in the amount of the attachment. “Because pre-judgment attachments are usually based upon reasonable estimates and not precise facts, parties often attach amounts which are later deemed excessive in light of changes in

circumstance.” Dongbu Express Co., Ltd. v. Navois Corp., 944 F. Supp. 235, 237 (S.D.N.Y. 1996). As such, “a reduction in security is ‘freely granted upon a showing that the [attachment] is excessive.’” Dongbu, 944 F. Supp. at 237 (quoting 7A James W. Moore et al., Moore’s Federal Practice P E14 (2d ed. 1996)); see also Fed. R. Civ. P. Supp. Rule E(6) (“Whenever security is taken, the court may, on motion and hearing, for good cause shown reduce the amount of security given.”); Mardas, 2007 WL 2229058, at *3 (same); Transportes Navieros y Terrestres v. Fairmount Heavy Transp. N.V., 07 Civ. 3076 (LAP), 2007 WL 1989309, at *4 (S.D.N.Y. July 6, 2007) (same).


The Order authorizes Flame to attach up to \$150,000 of Hassan’s assets. That amount exceeds the \$55,988 plus £4,800 awarded in the Pakistani action. Flame claims that the difference comprises the interest that has accrued since the entry of the Arbitration Award. However, the Pakistani High Court excluded interest, and Flame has not appealed. Because Flame stands to recover no more than the Pakistani Judgment, this Court will reduce the attachment amount to reflect the maximum award that Flame can recover in those proceedings.

CONCLUSION

For the foregoing reasons, Defendant Hassan Ali Rice Expert Company's motion to vacate this Court's Order for Process of Maritime Attachment and Garnishment is denied. However, Hassan's motion to reduce the security to the sum of the Pakistani Judgment is granted. The parties are directed to submit an amended order by September 11, 2007.

Dated: August 31, 2007
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

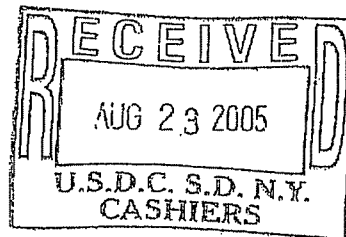
Counsel of Record:

George Murray, Esq.
Chalos, O'Connor & Duffy LLP
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Port Washington, NY 11050
Counsel for Plaintiff

Charles Edmund Murphy, Esq.
Lennon, Murphy & Lennon LLC
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Counsel for Defendant

EXHIBIT B

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New York, NY 10279
Richard A. Zimmerman (RZ 0963)
Patrick C. Crilley (PC 9057)
(212) 962 -1818



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SPEYBRIDGE SHIPPING COMPANY LTD.

Plaintiff,

-against-

IGEN SEA SHIPPING and
HASSAN ALI RICE EXPORT COMPANY.

Defendants.
-----X

JUDGE CHIN
ECF CASE
05 CV 7458

VERIFIED COMPLAINT

Plaintiff, by its attorneys, Richard A. Zimmerman, Esq., and Patrick C. Crilley, Esq., of counsel, complaining of the above named Defendants, alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction under 28 U.S.C. §1333, as hereafter more fully appears, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.
2. At all material times, Plaintiff was and now is a foreign corporation organized and existing under the laws of the United Kingdom.
3. At all material times, Defendant Igen Sea Shipping was and is a corporation organized and existing under the laws of Malta.

4. At all material times, Defendant Hassan Ali Rice Export Company was and is a corporation organized and existing under the laws of Pakistan.

5. On or about January 19, 2005, Plaintiff entered into a contract of charter party with Defendant Igen Sea Shipping for a voyage charter of the Motor Vessel "LE SHENG" (the "Vessel" and the "Charter Party") for the carriage of approximately 21,000 Metric Tons of bagged rice from Karachi, Pakistan to West Africa.

6. Defendant Hassan Ali Rice Export Company was named in the Charter Party as the "Shipper" of the cargo and the "Guarantor" of the performance of Defendant Igen Sea Shipping. Defendant Hassan Ali Rice Export Company provided a signed written guarantee of the performance of the Charter Party for Defendant Igen Sea Shipping.

7. The Vessel performed the intended voyage.

8. Plaintiff fulfilled all of its obligations under the Charter Party.

9. The Charter Party contained provisions whereby Defendant Igen Sea Shipping was obligated to pay to Plaintiff \$14,000.00 per day, pro rata, for each day or part of the day that the Vessel was delayed beyond the agreed upon laytime provisions of the Charter Party.

10. The Vessel experienced long delays at the two discharge ports in West Africa resulting in demurrage and/or detention charges of at least \$529,989.68 being owed by Defendant Igen Sea Shipping to the Plaintiff, no part of which has been paid to date, despite Plaintiff's demand for payment of same.

11. As a result of the long delays at the two West African ports, additional expenses for port agency charges and cargo surveyors were incurred in the amount of at least \$5,036.65. In accordance with the Charter Party, these charges are the responsibility of

the Defendant Igen Sea Shipping. Said Defendant has paid no part of these charges to date, although Plaintiff has duly demanded payment of same:

12. As a result of the long delays at the two West African discharge ports, the Vessel and Plaintiff lost the opportunity to perform subsequent employment that had been fixed for the Vessel resulting in damages to the Plaintiff in the amount of approximately \$377,187.50. Payment of these damages has been demanded of Defendant Igen Sea Shipping, but no portion of same has been paid.

13. The receivers of the cargo in West Africa have lodged a claim against the head owner of the vessel for alleged damage to the cargo in the amount of \$1,500,000.00. The head owner has claimed indemnity from the Plaintiff, who in turn has demanded indemnity from the Defendant Igen Sea Shipping. No portion of this claim has yet been paid by Defendant Igen Sea Shipping to date.

14. Defendant Igen Sea Shipping has breached its obligations under the Charter Party.

15. All payment demands upon Defendant Igen Sea Shipping have also been made upon Defendant Hassan Ali Rice Export Company as the guarantor of Defendant Igen Sea Shipping's performance under the Charter Party.

16. Defendant Hassan Ali Rice Exporting Company has not paid the demanded amounts and has breached the Charter Party and its guarantee obligation.

17. The Charter Party contains an agreement to arbitrate disputes as follows:

"This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator

within fourteen days, failing which the decision of the single arbitrator appointed shall be final.”

18. Plaintiff reserves its right to pursue all of the remedies to which it is entitled in the arbitration.

19. As a result of Defendant's aforesaid breach of its obligations under the Charter Party, Plaintiff now estimates that it will be damaged in the following amounts:

a) Demurrage and/or detention damages	-	\$529,989.68
b) Port agency and cargo surveyors damages	-	\$5,036.65.
c) Lost subsequent employment damages	-	\$377,187.50.
d) Cargo Claim Damages	-	\$1,500,000.00
e) Interest and costs including Arbitrators' and attorneys fees to be awarded in the London Arbitration (25% of Claims)-		\$603,053.00

Total anticipated damages	-	\$3,015,267.29
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20. Upon information and belief, and after investigation, Defendant Igen Sea Shipping and Defendant Hassan Ali Rice Export Company cannot be “found” within this District for the purpose of Rule B of the Supplemental Rules of Civil Procedure for Certain Admiralty and Maritime Claims, but Plaintiff is informed that Defendants have, or will shortly have, assets within this District comprising of, *inter alia* cash, funds, credits, wire transfers, electronic funds transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or for the benefit of Defendant (hereinafter “ASSETS”), including but not limited to ASSETS at or moving through banking institutions including but not limited to The Bank of New York, Inc.

and/or Citibank N.A. and/or HSBC Bank USA, N.A. and/or JPMorgan Chase and/or UBS AG and/or Bank Of America, N.A. and/or Standard Chartered Bank, and/or Northern Trust Corporation, and/or American Express Bank and/or Credit Suisse First Boston.

WHEREFORE, Plaintiff prays:

1. That process in due form of law according to the practice of this Court in admiralty and maritime jurisdiction issue against the Defendants, citing them to appear and answer under oath all and singular the matters alleged.
2. That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules of Civil Procedure, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Rules of Civil Procedure and the United States Arbitration Act, 9 U.S.C. § 8, attaching all claims, assets, cash, funds, credits, wire transfers, accounts, letters of credit, electronic funds transfers, freights, sub-freights, charter hire, sub-charter hire, or any other tangible and/or intangible assets belonging to, due, claimed by, being held for or on behalf of, or being transferred for the benefit of Defendants, including any such assets as may be in the possession, custody or control of, or being transferred through any garnishee within this District, including, without limitation, assets held by or at The Bank of New York, Inc. and/or Citibank N.A. and/or HSBC Bank USA, N.A. and/or JPMorgan Chase and/or UBS AG and/or Bank Of America, N.A. and/or Standard Chartered Bank, and/or Northern Trust Corporation, and/or American Express Bank and/or Credit Suisse First Boston up to and including the amount of \$3,015,267.29 to secure the Plaintiff's claims including interest and costs, and that all

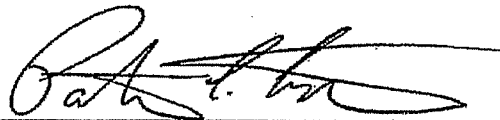
persons claiming any interest in the same be cited to appear and answer the matters alleged.

3. That Plaintiff may have judgment for its claims as aforesaid in the amount of \$3,015,267.29.

4. That following any and all such attachments and garnishments, the Court stay further proceedings pending the issuance of an arbitration award, and retain jurisdiction for the purpose of entering judgment on the award against the property attached.

5. That Plaintiff may have such other, further and different relief as the Court may deem just and proper.

Dated: New York, New York
August 23, 2005



Patrick C. Crilley (PC 9057)
Of Counsel to
Richard A. Zimmerman (RZ 0963)
Attorney for Plaintiff
233 Broadway – Suite 848
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VERIFICATION

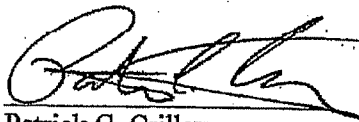
STATE OF NEW YORK)
) ss.:
COUNTY OF NEWYORK)

Patrick C. Crilley verifies the following:

1. I am an attorney and acting as such "of counsel" to Richard A. Zimmerman, the attorney for the Plaintiff herein, and make the following Verification pursuant to the Federal Rules of Civil Procedure, Supplemental Rule B, 28 USC §1746, and the Local Rules of the United States District Court for the Southern District of New York. I have read the foregoing Verified Complaint, know the contents thereof, and believe the same are true to the best of my information and belief which is based upon an examination of documents provided by Plaintiff herein.
2. The reason that this Verification is made by the undersigned rather than by Plaintiff is that Plaintiff is a foreign corporation none of whose officers or directors are within the District.
3. Deponent is authorized to make this Verification on behalf of Plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

New York, New York
Executed on the 23rd day of August, 2005.



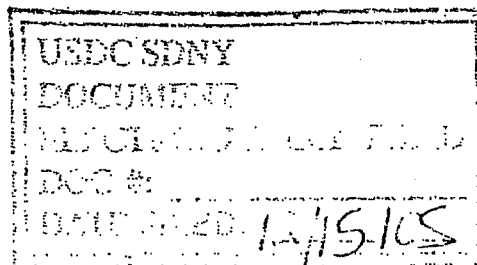
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EXHIBIT C

CHMIS

Richard A. Zimmerman, Esq.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
SPEYBRIDGE SHIPPING COMPANY LTD.

Plaintiff,

-against-

IGEN SEA SHIPPING and
HASSAN ALI RICE EXPORT COMPANY.

Defendants.
-----X

ECF CASE

Civil Action No.
05 CV 7458 (DC)

STIPULATION AND ORDER
OF SETTLEMENT AND DISMISSAL
OF DEFENDANT HASSAN
ALI RICE EXPORT COMPANY'S
MOTION TO
VACATE ATTACHMENT

WHEREAS, Plaintiff Speybridge Shipping Company Ltd. ("Speybridge") and Defendant Hassan Ali Rice Export Company ("Hassan Ali"), have agreed to settlement of their disputes in the above captioned action, the parties, by their respective undersigned attorneys, do hereby agree and stipulate to the following settlement arrangement:

1. Hassan Ali will execute a letter of guarantee in the agreed form acceptable to Speybridge; and
2. The parties agree to coordinate between themselves and the garnishee bank, Bank Of New York, to deposit \$399,950.00 of the Hassan Ali funds restrained in this action, into a joint interest bearing escrow account as security for Hassan Ali's obligations under No. 1 above and/or the Charter Party. The undersigned attorneys shall be the joint controllers of said escrow

account under wording to be agreed between the parties. The funds so escrowed may be drawn down by Speybridge as partial satisfaction of any amount due Speybridge from Hassan Ali under the letter of guarantee in No.1 above, and

3. Speybridge otherwise agrees to release the property of Hassan Ali presently attached in New York, agrees it will not in the future attach any further property of Hassan Ali anywhere in the world, provided always that Hassan Ali is not in breach of its agreed guarantee obligations referred to in No. 1 above, and agrees to dismiss Hassan Ali, without prejudice, from the pending Rule B attachment action in New York. Speybridge's Rule B attachment action may continue as against assets and property of Igen Sea Shipping should any such assets or property be found within the district.

WHEREFORE it is hereby stipulated and So Ordered that:

a) Garnishee Bank of New York, is hereby ordered to coordinate with the parties to deposit \$399,950.00 of Defendant Hassan Ali's restrained funds into a joint interest bearing account to be established and designated by the parties' attorneys. Bank of New York shall have no further obligations with respect to the restrained funds once such deposit into escrow has been completed.

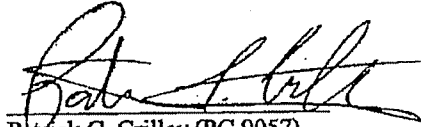
b) The Motion to Vacate Attachment brought on by Hassan Ali is hereby withdrawn, with prejudice, without costs or attorneys fees to either party as against the other.

c) Defendant Hassan Ali is hereby dismissed from the above captioned action, without prejudice, without costs or attorneys fees to either party as against the other, provided, however, that within 30 days of the So Ordered date hereof, if the joint escrow account provided for in No.2 above has not been established and/or the letter of guarantee provided for in No. 1 above has not been issued, counsel for plaintiff may apply by letter for restoration of the action as

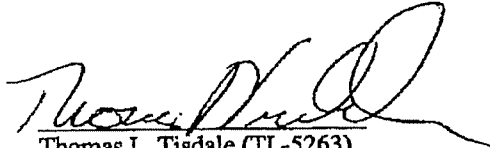
against Hassan Ali, in which event the action will be restored as against Hassan Ali.

New York, New York

Dated: Dec. 8, 2005

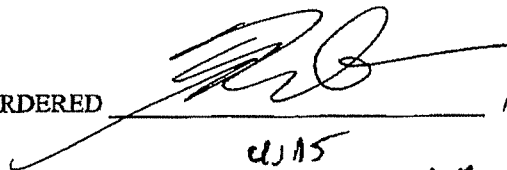


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Thomas L. Tisdale (TL-5263)
TISDALE & LENNON, LLC
Attorneys for Defendant
Hassan Ali Rice Export Company
11 West 42nd Street, Suite 900
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(212) 354-0025

SO ORDERED


cl 15

12/14/05
Date

EXHIBIT D

Judge Bernman

06 CV 2841

NOURSE & BOWLES, LLP
Attorneys for Plaintiff
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At 55 Broadway
New York, NY 10006-3030
(212) 952-6200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
SALAM INTERNATIONAL TRANSPORT &	:
TRADING CO. PLC,	:
c/o JORDAN NATIONAL LINES FOR SHIP	:
OPERATIONS,	:
	:
Plaintiff,	:
	:
- against -	:
	:
IGEN SEA SHIPPING AND HASSAN ALI RICE	:
EXPORT CO.,	:
	:
Defendants.	:
-----X	

06 Civ. ()

VERIFIED COMPLAINT

Plaintiff, SALAM INTERNATIONAL TRANSPORT & TRADING CO. PLC,
c/o JORDAN NATIONAL LINES FOR SHIP OPERATIONS, by its attorneys NOURSE &
BOWLES, LLP, alleges on information and belief as follows:

JURISDICTION AND VENUE

1. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

2. At all material times, Plaintiff, SALAM INTERNATIONAL TRANSPORT & TRADING CO. PLC, was and now is a corporation organized under and existing by virtue of the laws of the Republic of Jordan with an office and place of business at c/o JORDAN NATIONAL

LINES FOR SHIP OPERATIONS, P.O. Box 212955, Amman 11121, Jordan, and was the owner of the MV FARAH 3 (the "Vessel"), a dry cargo ship of about 14,798 deadweight tons capacity engaged in the carriage of dry cargo by water.

3. Upon information and belief, at all material times, Defendant, IGEN SEA SHIPPING ("Igen"), was and now is a corporation organized and existing under and by virtue of the laws of Pakistan with an office and place of business at 102-108, 1st Floor Cotton Exchange, Building I.I, Chundrigar Road, Karachi, Pakistan, and was the charterer of the Vessel.

4. Upon information and belief, at all material times, Defendant, HASSAN ALI RICE EXPORT CO. was the alter ego of Igen Sea Shipping, and was and now is a corporation organized and existing under and by virtue of the laws of Pakistan with an office and place of business at 102-108, 1st Floor Cotton Exchange, Building I.I, Chundrigar Road, Karachi, Pakistan.

FACTS GIVING RISE TO CLAIM

5. On or about November 12, 2005, a voyage charter party (the "Charter") was made between Plaintiff, as owner of the Vessel, and Defendant Igen, as charterer whereby Defendant chartered the Vessel for the carriage of bagged rice from one safe port Karachi for discharge at two safe ports, safe berths, Madagascar and West Africa.

6. The Charter provided a total laytime of 2,000 metric tons per weather working day for loading, Sundays and holidays excluded, even if used, and 1,000 metric tons per weather working day for discharging, Sundays and holidays excluded, even if used. Demurrage was payable by Defendant to Plaintiff at the rate of \$7,500 per day pro rata for all time that loading and discharging exceeded the allowed laytime. The Charter also provided that 100% of the

freight less commissions was payable within six banking days into Plaintiff's bank account upon completion of loading and demurrage was to be payable against all supporting documents within fifteen days after completion of discharge.

7. Pursuant to the Charter, the Vessel proceeded to and arrived at Karachi on or about November 26, 2005 and tendered her Notice of Readiness. The Vessel berthed on or about December 6, 2005 and commenced loading on the same day. The Vessel completed loading on or about December 13, 2005, and proceeded to Tamatave and Douala where it discharged its cargo. The Vessel completed discharge at Douala on or about February 17, 2006.

8. The Vessel was delayed at her load port of Karachi and was further delayed at both discharge ports of Tamatave and Douala. According to Plaintiff's laytime calculations, the Vessel was on demurrage during the voyage for 15.2180 days which amounts to \$114,135.42 (15.2180 x \$7,500.00 per day (or pro rata)).

9. Plaintiff sent a Debit Note to Defendant together with all supporting documents for demurrage in the amount of \$114,135.42. Pursuant to the terms of the Charter, Defendant should have paid the demurrage within fifteen days after completion of discharge or latest when it received the Debit Note. However, despite various reminders from Plaintiff to Defendants, no demurrage has been received to date.

10. In addition, Plaintiff also seeks payment of \$31,250.00 for extra disbursement account expenses owner was forced to pay at Douala on charterer's behalf. Despite written demand for payment, no payment has been received.

11. By reasons of the premises, Plaintiff has sustained damages in the amount of \$145,385.42, as best as can presently be calculated.

12. The Charter also provided in that, if any dispute arises between the parties, the matter in dispute shall be referred to arbitration in London with English law. Plaintiff reserves its right to arbitrate. In addition to the unpaid demurrage and disbursement account expenses in the amount of \$145,385.42, Plaintiff is also entitled, in London, to attorneys' fees and other taxable costs, incurred in bringing these claims, which as best as can presently be calculated, are \$87,140 representing 10,000 (GBP) or \$17,428.00 for arbitrators' fees at the prevailing rate, and attorneys' fees at 40,000 (GBP) or \$69,712.00.¹

13. Arbitration of these disputes in London arbitration may take 3 years. Plaintiff is entitled to and would receive interest at the present prime rate of 6.5% or \$16,992.00.

14. Plaintiff's total claim against Defendants for which it seeks security herein is \$249,517.42.

15. All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

16. Plaintiff brings this action by seeking an order of seizure of Defendants' goods and chattels, or credits and effects in the hands of garnishees to be named in the process, in the amount sued for herein, so that the Court shall have jurisdiction to direct Defendants to proceed with arbitration of Plaintiff's claim against Defendants and to retain jurisdiction to enter a judgment upon the arbitration award in the London arbitration.

¹ Calculated at exchange rate of 1.00 pound sterling to 1.74 U.S. dollar as updated April 11, 2006 by the IMF.

WHEREFORE, the Plaintiff prays the following:

1. That process in due form of law according to the practice of this Court in causes of admiralty and maritime jurisdiction may issue against Defendants, Igen Sea Shipping and Hassan Ali Rice Export Co., and that they be personally cited to appear and answer the matters set forth above.

2. That if the Defendants cannot be found within this District, then that Defendants' goods and chattels, or credits and effects within the hands of garnishees within the jurisdiction of this Court be attached by process pursuant to Supplemental Rule B of the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims and in an amount sufficient to answer Plaintiff's claims of \$249,517.42, the sum sued for in this Complaint;

3. That the action thereafter be stayed pending arbitration award and that a judgment be entered upon the award of the aforesaid arbitration for the amount of any recovery by Plaintiff, together with interest, costs and disbursements of this action; and

4. That this Court grant to Plaintiff such other and further relief as may be just and proper in the circumstances.

Dated: New York, New York
April 11, 2006

NOURSE & BOWLES, LLP
Attorneys for Plaintiffs

By: Rahul Wanchoo
Rahul Wanchoo (RW 8725)
One Exchange Plaza
At 55 Broadway
New York, NY 10006-3030
(212) 952-6200

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

RAHUL WANCHOO, being duly sworn, deposes and says:

I am an attorney at law and a member of the firm of Nourse & Bowles, LLP, attorneys for plaintiff.

I have read the foregoing Verified Complaint and know the contents thereof and the same are true to the best of my knowledge, information and belief.

The reason that this verification is made by me and not by plaintiff is that plaintiff is a foreign corporation and is not within this District.

Rahul Wanchoo

Sworn to and subscribed to
before me this 14 day of
April, 2006.

Corine M. Colligan
Notary Public

CORINE M. COLLIGAN
Notary Public, State of New York
No. 01CO6014998
Qualified in Richmond County
Commission Expires 10/19/2006

EXHIBIT E

TISDALE & LENNON, LLP
11 West 42nd Street, Suite 900
New York, NY 10036
(212) 354-0025 -- phone
(212) 869-0067 -- fax

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SALAM INTERNATIONAL TRANSPORT &
TRADING CO., PLC
c/o JORDAN NATIONAL LINES FOR SHIP
OPERATIONS,

Plaintiff,

-- against --

IGEN SEA SHIPPING and HASSAN ALI
RICE EXPORT CO.,

Defendants.

06 CV 2841 (RMB)

**DECLARATION OF AZIZ ASHIQ ALI IN SUPPORT OF HASSAN ALI
RICE EXPORT CO.'S MOTION TO VACATE PLAINTIFF'S RULE B ATTACHMENT**

COUNTRY OF PAKISTAN

KARACHI

Aziz Ashiq Ali S/o Ashiq Ali Karim, under the penalty of perjury of the laws of the

United States, states as follows:

1. I am over eighteen years old and understand the obligations of an oath. I am the sole proprietor of Igen Sea Shipping ("Igen Sea").
2. I make this Declaration based upon my own personal knowledge as well as upon documents that I have received in the regular course of the business that I believe to be true and accurate.

3. Igen Sea maintains offices located at Ground Floor, Ifrikhar Chambers, Hasrat Mohani Road, Karachi, Pakistan 7400.

4. I confirm that Igen Sea has no direct or incorrect connection, link of ownership or any other relationship whatsoever with Hassan Ali Rice Export Co. ("Hassan Ali") except that Igen Sea occasionally charters vessels which it then subcharters to Hassan Ali.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

19-05-2006

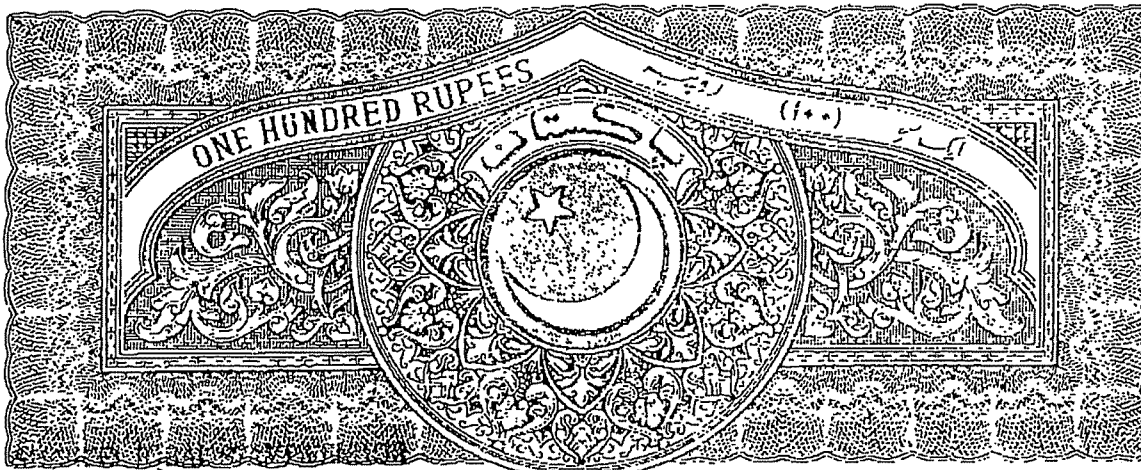
Date


Aziz Ashiq Ali



PAKISTAN

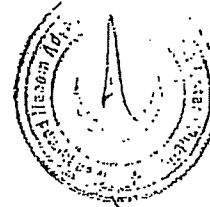
100 RS.



Lic. No. 122, Shop No. 72, New Ruby Centre,
Talpur Road, Baiton Market, Karachi.

02 MAY 2006

S. No. 71191 DATE 02 MAY 2006
ISSUED TO WITH ADDRESS Shipping
THROUGH WITH ADDRESS _____
PURPOSE _____
VALUE RS. 100 (ATTACHED)
STAMP VENDOR'S SIGNATURE _____

AFFIDAVIT

I, Aziz Ashiq Ali S/o Ashiq Ali Karim, Muslim, adult, resident of House No.B-8, Noorani Saghar Colony, Ruby Street, Garden West, Karachi do hereby solemnly affirm and state as under:-

1. That I am the Sole Proprietor of M/s Igen Sea Shipping having office at Ground Floor, Iftikhar Chambers, Hasrat Mohani Road, Karachi-74000.
2. That I confirm and attest in the name and on behalf of M/s Igen Sea Shipping, Karachi that there is no direct or indirect connection, link of ownership or any relationship of whatsoever nature between Igen Sea Shipping and Hassan Ali Rice Export Company except Igen Sea Shipping have acted as Charterer of Vessels.
3. That whatever stated above is true and correct to the best of my knowledge and belief.

Karachi dated this 11th day of May, 2006.

Deponent.

ATTENDED
Mahamud Ali (Advocate)
NOTARY PUBLIC
Karachi
11 MAY 2006

EXHIBIT F

NOURSE & BOWLES, LLP
Attorneys for Plaintiff
One Exchange Plaza
At 55 Broadway
New York, NY 10006-3030
(212) 952-6200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SALAM INTERNATIONAL TRANSPORT &
TRADING CO. PLC,
c/o JORDAN NATIONAL LINES FOR SHIP
OPERATION LTD.,

Plaintiff,

- against -

IGEN SEA SHIPPING AND HASSAN ALI RICE
EXPORT CO.,

Defendants.
-----X

06 Civ. 2841 (RMB)

**UNSWORN DECLARATION
UNDER PENALTY OF PERJURY**

CAPTAIN MAZEN BADDAR hereby declares pursuant to 28 U.S.C. Section 1746:

1. I am employed by Jordan National Lines for Ship Operation Ltd. in the position of Operation Manager. As such, I am fully familiar with the matters stated herein. I have been employed in shipping since 1979.

2. Attached hereto as Exhibit 1 is a copy of the invoice dated 14th December, 2005 which Jordan National Lines sent to Igen Sea Shipping for ocean freight due for the charter of the M/V FARAH 3 dated November 12, 2005 for a voyage charter from Karachi to West Africa. As shown in this invoice, the gross freight due was \$579,938.52. As is also shown on that invoice, two brokerage commissions are to be deducted. They are 1.25% address commission (referred to as "ADCOM" in Box 24 of the charter party) and 1.25% brokerage commission

payable to charterers' broker, Oceanic Shipping and Trading Co. Pursuant to Box 24 of the charter, both of these commissions are "to be deducted at source". In other words, Igen Sea as the "source" of the payment, is entitled to deduct those sums. It holds the "address commission" itself as a discount from freight without paying it to anyone else. It pays the 1.25% to Oceanic.


3. Attached as Exhibit 2 is a copy of the notice received by JNLSO from its bank showing that it is the "Beneficiary Customer" of \$361,440 "Ocean Freight Remittance M/V FARAH 3" paid by Hassan Ali Rice Export Co. Ltd. (as the "Ordering Customer").

4. Attached as Exhibit 3 is a copy of the notice received by JNLSO from its bank showing that it is the "Beneficiary Customer" of \$200,000 "Ocean Freight Remittance M/V FARAH 3" paid by Hassan Ali Rice Export Co. Ltd. (as the "Ordering Customer").

5. I was extremely surprised to see that Hassan Ali paid the ocean freight which was invoiced to and should have been paid by Igen Sea. In my experience, it is unheard of for a party other than the named charterer to pay the ocean freight. Among other things, Hassan Ali's direct payment of freight to JNLSO made it impossible for Igen Sea to deduct its 1.25% address commission discount from the freight payable to JNLSO. This strongly suggests to me that Hassan Ali Rice Export Co. Ltd. is indeed the charterer of the M/V FARAH 3 from Jordan International.

I declare under penalties of perjury under the laws of the United States of America that the foregoing is true and correct.

By: _____


CAPTAIN MAZEN BADDAR

Executed On 17th May, 2006

At Amman, Jordan

Exhibit 1

JORDAN NATIONAL LINES FOR SHIP OPERATION

Wadi Sagra-Arar St, Salam Trading Center, 3rd Floor- P.o Box 212955, Amman 11121,
Jordan. Tel: +962 6 5606035 Fax: +962 6 5692136 e-mail: chartering@jniso.jo

Ref: 011412/FA
Date: 14th DECEMBER 2005

Pages(1)

M/V FARAH 3 / IGEN SEA SHIPPING
CP DTD 12th November 2005

FREIGHT INVOICE

QTTY 13331.92 MT X USD 43.50 USD 579,938.52

LESS

2.5 PCT TOTAL COMMISSION USD 14,498.47
OAP USD 4000.00

BALANC DUE TO OWNER = USD 561,440.00

PLS REMIT NET USD 561,440.57 TO OWNERS' BANK AS FOLL:

BANK: ARAB BANK PLC.
SHMEISANI BRANCH
AMMAN - JORDAN

BENEFICIARY : JORDAN NATIONAL LINES FOR SHIP OPERATION
ACCOUNT NO. USD 259804 - 3 / 510
SWIFT CODE : ARABJOAX118

CORRESPONDENT BANK:
CREDIT SUISSE
HEAD OFFICE ZURICH
SWIFT CODE: CRESCHZZ80A
THROUGH THEIR CORRESPONDENT BANK IN USA : DEUTSCHE BANK TRUST CO.,
NEW YORK
SWIFT : BKTRUS33



JNL SO
SENT

11-12-2007

Exhibit 2

1111111111

IT

22 Dec 05 18:01

Message Type MT 103 Single Customer Credit Transfer

Value Date	22/12/05	Creation Date	2005/12/22 13:00:00
Currency	USD US Dollar	Amount	361,440.00
Priority	Normal	Monitories	0

عليه امره جبر العظم

Error Details

Description	Tag	Value
Sender's Reference	20:	PT0078614BN03850
Bank Operation Code	23R:	CRED
Value Date/Currency/Interbank Settled Amount	32A:	22/12/05 USD US Dollar 361440.00
Currency/Unsettled Amount	31B:	PKR Pakistan Rupee 2,628500.60
Exchange Rate	36:	59.84
Ordering Customer	50K:	HASSAN ALI RICE EXPORT CO. LTD 1ST FLOOR COTTON EXCHANGE BLDG. ICHUNDRI GAR ROAD KARACHI
Account With Institution	57D:	ARAB BANK PLC SHARISANI BRANCH JORDAN
Beneficiary Customer	59:	JORDAN NATIONAL LINES A/C # 259804-3/510
Remittance Information	70:	OCEAN FREIGHT REMITTANCE M.V. FARAL-3
Details of Charges	71A:	SHA

10. MR. Farooq

Exhibit 3

P.12

1111111111

199969.99

IT

22 Dec 05 18:01

Message Type MTC 103 Single Customer Credit Transfer

Value date 22/12/05 Creation Date 2005/12/22 12:51:10

Currency USD US Dollar Amount 200,000.00

Priority Normal Non Urgent 0

Error Details

Description
 Sender's Reference Tag Value
 Bank Operation Code 20; 1700786H15N93R40
 Value Date/Currency/Interbank Settled Amount 23B; CRED
 Currency/Instructed Amount 22A; 22/12/05 USD US Dollar 200000.00
 Exchange Rate 23D; PKR Pakistan Rupee 1963000.00
 Ordering Customer 36; 59.34
 30K; (JASBAN ALI RICE EXPORT CO. LTD
 1ST FLOOR COTTON EXCHANGE
 BLDG ECHUNDRIGAN ROAD
 KARACHI
 KARAI BANK PLC
 SHARIFABAD BRANCH
 JORDAN
 JORDAN NATIONAL LINES
 AVC #2598643/510
 OCEAN FREIGHT REMITTANCE
 M V. PARAILA
 SIDA

Account With Institution

Beneficiary Customer

Remittance Information

Details of Charges

10:00:00

EXHIBIT G

TISDALE & LENNON, LLP
 11 West 42nd Street, Suite 900
 New York, NY 10036
 (212) 354-0025 – phone
 (212) 869-0067 – fax

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

 SALAM INTERNATIONAL TRANSPORT & :
 TRADING CO., PLC :
 c/o JORDAN NATIONAL LINES FOR SHIP : 06 CV 2841 (RMB)
 OPERATIONS, :

Plaintiff,

- against -

IGEN SEA SHIPPING and HASSAN ALI
 RICE EXPORT CO.,

Defendants.

**DECLARATION OF ABDULLAH HASHWANI IN SUPPORT OF HASSAN ALI
 RICE EXPORT CO.'S MOTION TO VACATE PLAINTIFF'S RULE B ATTACHMENT**

COUNTRY OF PAKISTAN)

KARACHI)

Abdullah Hashwani, under the penalty of perjury of the laws of the United States, states as follows:

1. I am over eighteen years old and understand the obligations of an oath. I am the Sole Proprietor of the Defendant Hassan Ali Rice Export Company (hereafter "Hassan Ali").
2. I make this Declaration based upon my own personal knowledge as well as upon documents that I have received in the regular course of the business that I believe to be true and accurate.

3. Upon information and belief, on or about November 12, 2005, Igen Sea Shipping (hereafter "Igen Sea") entered into a GENCON form Charter Party with Salam International Transport & Trading Co. PLC (hereafter "Salam" or "Plaintiff") for the M/V "Farah 3" (hereafter the "Vessel"). The Salam - Igen Sea Charter Party called for the carriage of approximately 13,300 metric tons of bagged rice from one to two safe berths, one safe port Karachi, Pakistan to one to two safe berths, safe ports Madagascar and West Africa. A true and accurate copy of the Salam - Igen Sea Charter Party is attached hereto as Exhibit "1." By operation of this Charter Party Igen Sea was the Vessel's Charterer. Hassan Ali was identified within Box 17 of this Charter Party as the Shipper of the cargo.
4. Upon information and belief, Igen Sea maintains offices located at Ground Floor, Ifikhar Chambers, Hasrat Mohani Road, Karachi, Pakistan. See Box 4 of the Salam - Igen Sea Charter Party attached hereto as Exhibit 1. Please also see the Affidavit of Aziz Ashiq Ali S/o Ashiq Ali Karim of Igen Sea Shipping attached as an Exhibit to the Affidavit of Kevin J. Lennon.
5. On November 12, 2005 Hassan Ali Rice Export Company ("Hassan Ali") entered into a Gencon form Charter Party for the Vessel with Igen Sea on terms identical - except for 1.25% ADCOM for IGEN. A true and accurate copy of the Igen Sea - Hassan Ali Charter Party is attached hereto as Exhibit "2." By operation of this Charter Party, IGEN Sea was the vessel's disponent owner and Hassan Ali was the Vessel's sub-charterer and it was again identified within Box 17 as the Shipper of the cargo.

6. Hassan Ali maintains its offices at 1st Floor, Cotton Exchange Building, I.I. Chundrigar Road, Karachi Pakistan. See Box 4 of Igen Sea – Hassan Ali Charter Party attached hereto as Exhibit 2.
7. Igen Sea is a company fully separate and distinct from Hassan Ali. There are no overlapping officers, directors, shareholders or employees. The two companies do not share common offices and are not affiliated in any manner. Upon information and belief, Igen Sea acts for many different Pakistani shippers including, from time to time, Hassan Ali. However, any and all dealings between the two companies are at arm's length.
8. There is no contract of charter between Salam and Hassan Ali. Moreover, the Salam – Igen Sea Charter Party provides that if the parties thereto agreed to resolve disputes in London with English law to apply. See Box 25 of the Salam – Igen Sea Charter Party attached hereto as Exhibit 1.
9. Upon information and belief, Salam has not instituted arbitration proceedings against Igen Sea Shipping in London although it is required to do so under the Charter Party for any claim arising under its contract of charter with Igen Sea.
10. Plaintiff has no colorable claim to institute arbitration proceedings against Hassan Ali.
11. Review of Plaintiff's Affidavit in Support of Application for Maritime Attachment dated April 8, 2006 demonstrates that Salam's alter ego allegation against Hassan Ali is predicated solely on an Igen Sea e-mail attached as Exhibit A to Salam's Affidavit. Salam does not identify any other basis in its Affidavit in support of the alter ego allegation against Hassan Ali contained in its Complaint.

12. As stated above, Hassan Ali and Igen Sea entered into a Charter Party on terms identical to those between Salam and Igen Sea. Because Igen Sea found that after performance of its obligations under the charter party that Salam owed it \$20,383.09 it simply directed Salam to make this payment directly to Hassan Ali.
13. Upon information and belief, if Igen Sea had not directed Salam to pay Hassan Ali directly then Igen Sea would need to re-issue the payment to Hassan Ali under the terms of the back-to-back charter party it had entered with Hassan Ali. This is why it appears Igen Sea requested Salam to route the payment directly to Hassan Ali. It should be noted that in breach of its own obligations Salam has not issued this payment.
14. Because Hassan Ali is not the alter ego of Igen Sea there is no basis in law for the Salam's Ex Parte Order of Attachment obtained from this Court allowing Salam to obtain security from HASSAN ALI for its alleged claims against Igen Sea. Thus, the Court should vacate its Ex Parte Order as against Hassan Ali.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

10-05-2006
Date



Abdullah Hashwani
Abdullah Hashwani

EXHIBIT H - 1

NOURSE & BOWLES, LLP
Attorneys for Plaintiff
One Exchange Plaza
At 55 Broadway
New York, NY 10006-3030

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SALAM INTERNATIONAL TRANSPORT &
TRADING CO. PLS,
c/o JORDAN NATIONAL LINES FOR SHIP
OPERATIONS

Plaintiffs

- against -

IGEN SEA SHIPPING AND HASSAN ALI RICE
EXPORT CO.,

Defendants

UNSWORN DECLARATION UNDER PENALTY OF PERJURY

I, SHEIKH DILDAR HUSSAIN hereby declares pursuant to 28 U.S.C. Section 1746:

As instructed by M/s. Usmani & Iqbal I carried out investigation regarding M/s. IGEN Sea Shipping ("IGEN") as to their antecedents. Considering that it is not a registered company under the laws of Pakistan, there is no way of checking its details from the Registrar's office. Consequently on 13.02.2006 I personally visited the address given, namely Ground Floor, Iftikhar Chambers, Hasrat Mohani Road, Karachi. Iftikhar Chambers is a dilapidated building and I found that there were no offices of IGEN anywhere on the ground floor. I then investigated other floors of the building and found there were no offices of IGEN even there.

I was again instructed by M/s. Usmani & Iqbal to investigate IGEN at the same address on 12.05.2006. Accordingly I again proceeded to the same building and this time I found that there was a small name plate next to a shop whose shutters were down and the name plate read "IGEN SEA SHIPPING". When I examined the shutters I found that these had remained locked for a long time as one could see rust and even cob webs on the sides of the shutters. The building structure in the vicinity of this shop was exceedingly dilapidated and it would appear that this shop has not been used for a long time. As far as the sign of IGEN is concerned, this appears to have been put up there somewhat recently. I took photographs of the said shop which shows the dilapidated condition of the shop and the surrounding area. Unfortunately the name 'IGEN Sea Shipping' cannot be seen in the photographs as it was very small. My impression was that no business of any kind has been carried out from this location for quite some time. Upon enquiry from the other offices/shops in the building I was told that the building belongs to Hashwanis' and that this sign of IGEN was put up there only recently. It is not possible for me to say as to who these persons were because they were not forthcoming in this regard and were not interested in getting involved.

I am enclosing five in number photographs of the shop in question..

I declare under penalties of perjury under the laws of the United States of America that the foregoing is true and correct.



By: SHEIKH DILDAR HUSSAIN

Executed on May 16, 2006

At Karachi, Pakistan



EXHIBIT H-2





EXHIBIT H-3

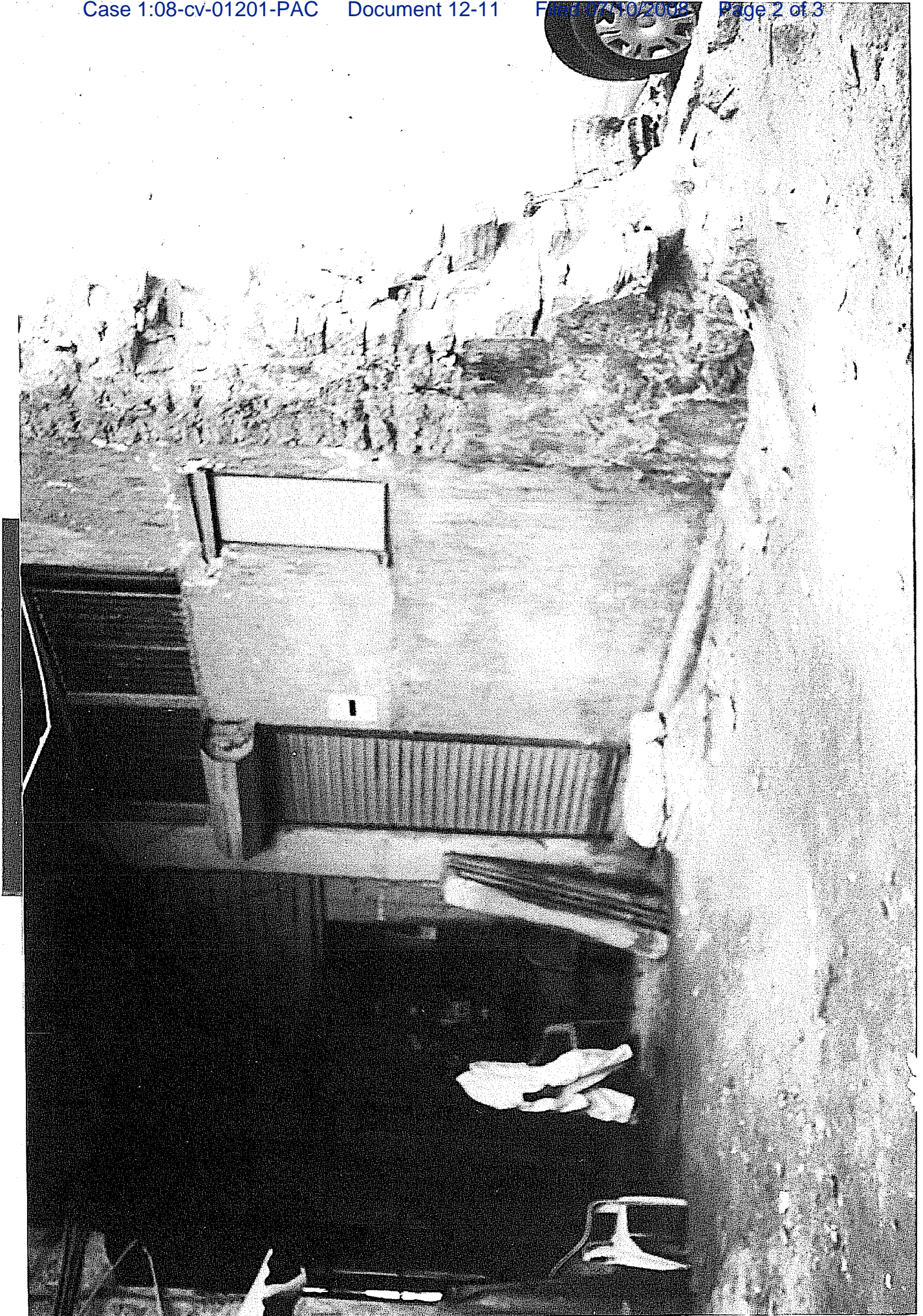
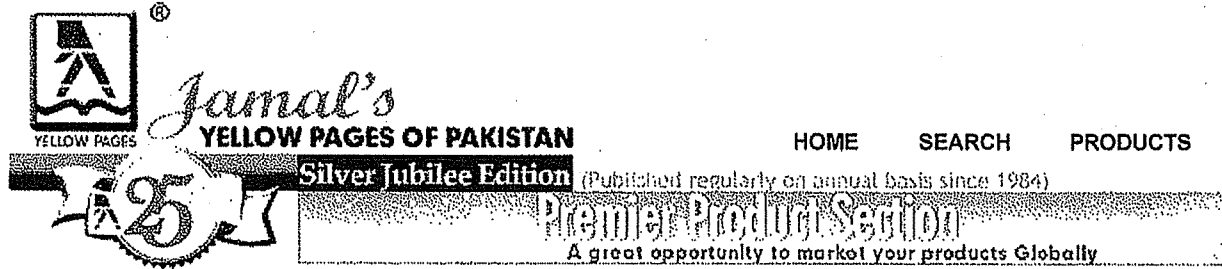




EXHIBIT I

[Home](#) | [Make JYP my homepage](#) | [Tell a friend](#)



Total 0 Record(s) found for Igen Sea shipping in Karachi

Page(s):

1

Your search - Igen Sea shipping - did not match any record.
Suggestions:

- Make sure all words are spelled correctly.
- Try different keywords.
- Try more general keywords.
- Search Company name, phone # or UAN within particular city for more precise results.

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18 C.P. & Berar Cooperative Housing Society, Karachi - 75350, Pakistan.

Phones: (92-21) 453 6321, 111-222-444 || Fax: (92-21) 4536330 || E-mail: info@jamals.com

EXHIBIT J

NOURSE & BOWLES, LLP
Attorneys for Plaintiff
One Exchange Plaza
At 55 Broadway
New York, NY 10006-3030
(212) 952-6200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SALAM INTERNATIONAL TRANSPORT &
TRADING CO. PLC,
c/o JORDAN NATIONAL LINES FOR SHIP
OPERATIONS,

Plaintiff,

- against -

IGEN SEA SHIPPING AND HASSAN ALI RICE
EXPORT CO.,

Defendants.
-----X

06 Civ. 2841 (RMB)

**UNSWORN DECLARATION
UNDER PENALTY OF PERJURY**

KLAUS C.J. MORDHORST hereby declares pursuant to 28 U.S.C. Section 1746:

1. I am the President of Leffler Chartering, Inc., a ship brokerage and consulting firm.
2. I have been employed as a ship broker continuously and on a full-time basis since 1958. As such, I am fully familiar with all aspects of the ship brokerage industry. Among my professional memberships, I am a member of the Society of Maritime Arbitrators, Inc. and currently serve as the President of that organization. The Society of Maritime Arbitrators, Inc. is generally considered to be the leading arbitral body in the United States to hear and decide disputes arising out of charter parties.

Handwritten signature/initials

3. It is quite common for a "chain" of charters to exist in which a vessel owner charters its vessel to a charterer, who in turn sub-charters the vessel to a sub-charterer. Sometimes, the vessel is then further sub-chartered, so that the chain can become quite long. In the industry, the first charter in the chain is called the "head charter". The "middleman" who is the charterer under the head charter, and subsequently is the owner under the sub-charter, is called the "disponent owner". It is normal, in such chains of charters, for each entity which "charters in" the vessel and then in turn "charters out" the vessel, i.e., each disponent owner, to make a profit on that transaction. In other words, the disponent owner will "charter in" the vessel at a lower freight rate than it "charters out" the vessel. Indeed, if the disponent owner does not make a profit on the sub-charter by charging a higher freight rate, there would be no bona fide business reason for the charter to exist.

4. For these very reasons, it is standard and typical in a "chain" of charters that the owner will send a freight invoice to its charterer who will in turn both pay that freight invoice which it has received from the owner and send its own freight invoice to its sub-charterer. The sub-charterer will in turn pay the freight invoice of the disponent owner. It is most extraordinary and unusual for a sub-charterer to pay freight directly to a head owner with whom it has no direct contractual relations. Indeed, if a sub-charterer did so, it would fail to pay the invoice from the party with whom it contracted (the disponent owner) and be in breach. Further, in an ordinary and typical transaction, it would be essentially impossible for the sub-charterer to pay a sum to the head owner, which simultaneously satisfied the owner's invoice to its charterer (the disponent owner), but did not overpay or underpay the amount which the sub-charterer owed to the disponent owner. This is true for two reasons:

4/.

- a) As I stated above, in a normal chain of charters, there is an increase in the freight rates with each sub-charter so that the sub-charterer at the bottom of the chain will have an obligation to pay a greater sum than the owner would have invoiced to the first charterer in the chain.
 - b) Brokerage commission deducted from each charter would invariably lead to a difference in the freight which the owner invoiced to its charterer and which the bottom sub-charterer in a chain would pay.
5. I have received and reviewed:
- a) The charter party of the M/V FARAH 3 dated Karachi 12-11-2005 between Salam International Transport & Trading Co. PLC, c/o Jordan National Lines for Ship Operations ("JNLSO"), as owners, and Igen Sea Shipping, as charterers; and
 - b) The charter party of the M/V FARAH 3 dated Karachi 12-11-2005 between Igen Sea Shipping, as owners, and Hassan Ali Rice Export Co., as charterers.

Those charters are attached hereto, respectively, as Exhibits 1 and 2.

6. The two charters, Exhibits 1 and 2, appear to me to be exact duplicates of each other except that (a) the name of owner and charterer in Boxes 3 and 4 are different and (b) the brokerage commission in Box 24 is different.

7. Significantly, the freight rates of the two charters are identical (Boxes 13 in both charters). I find this to be extraordinary and unusual. Igen Sea has agreed to accept all of the risk and obligations, both of being a charterer (under the head charter) and an owner (under the sub-charter), yet except only for the inclusion of an address commission it would not be paid one

single cent for accepting these risks. To my mind, there is no valid business purpose for Igen Sea to accept such risks without real compensation.

8. Pursuant to Box 24 of the head charter, two commissions are "to be deducted at source". Those commissions are 1.25% ADCOM and 1.25% to Oceanic, the ship broker named in Box 1. In the industry ADCOM means "address commission", here of 1.25%. In the industry, an address commission is a discount from freight. The charterer simply deducts from freight and holds for itself the permitted address commission. This is consistent with the language "to be deducted at source" in Box 24. Thus, under the head charter, Exhibit 1, Igen Sea is entitled to deduct from the sum of freight which it pays to owners 1.25% of such freight, demurrage or deadfreight ("F/D/D"). Likewise, Igen Sea is also obliged to pay 1.25% to its broker Oceanic.

9. The brokerage commission clause of the sub-charter, Box 24 (Exh. #2), has a slight variation from the head charter. It provides

"1.25% ADCOM to Igen and 1.25% to Oceanic on F/D/D to be deducted at source".

This clause is NOT consistent with normal practice in the world of commercial ship brokerage. As I stated above, an address commission is a discount from freight which is held by the charterer. This above clause in the sub-charter instead says "ADCOM to Igen" suggesting that the charterer's discount should be paid to the disponent owner. Therefore, under this charter, the charterer (Hassan Ali Rice) will be paying two brokerage commissions, one to the disponent owner and one to Oceanic, but never receives its address commission discount. Thus, while in the head charter the address commission offsets the brokerage commission so that the charterer pays no net commission, in this sub-charter, the charterer will pay two commissions totaling 2.50%.

10. Further, the combination of these two charters converts Igen Sea to the role of a broker. Specifically, as stated in paragraph 7, Igen Sea has not earned anything on differential in the freight rates between the two charter parties (because there is no rate differential) and the only compensation that Igen Sea would receive is an address commission of 1.25%. Based on my almost 50 years' experience, 1.25% is typical for commission a broker receives under charter party transactions. Indeed, this is also borne out by the broker Oceanic Shipping receiving identical 1.25% commissions under each charter party.

11. While Igen Sea's compensation is at most as a broker, it has – at least on paper – accepted the risks and obligations of being both a charterer and owner. I find this extraordinary and unusual.

12. It is my understanding that Hassan Ali Rice Export Co. has paid the freight which JNLSO invoiced to Igen Sea. As I stated above, I find it unusual that, under any circumstances, a wholly separate and distinct corporate entity would pay the obligations of another separate and distinct corporate entity. Further, such direct payment removes the ability of Igen Sea to deduct an address commission from its payment to head owners. Additionally, it would have required that Hassan Ali transfer separate sums to Igen Sea if it intended to pay freight and address commission to Igen Sea.

13. In sum, based on a combination of the above factors, it is my opinion that there is no valid commercial purpose for the existence of Igen Sea in this chain of charters and, further, that Igen Sea never actually participated in the chain of charters so that Hassan Ali is the one and only charterer.

I declare under penalties of perjury under the laws of the United States of America that
my foregoing opinion is true and correct.

By: 

KLAUS C.J. MORDHORST

Executed On May 17, 2006

At Kinnelon, New Jersey, U.S.A.

**The first page of each of the two charters
Mr. Mordhorst reviewed (Exhibits 1 and 2 to his
Declaration) are annexed hereto. The complete
charters can be accessed on-line as
Exhibits 1 and 2 to Document 14 of the Docket Sheet in
*Salam Int'l Transport & Trading Co. v. Igen Sea Shipping
and Hassan Ali Rice Export Co.*, 06 Civ. 2841 (S.D.N.Y. May 25, 2006).**

1 Shipbroker OCEANIC SHIPPING & TRADING CO. MARINE PRIDE BUILDING, SUITE # 402, P/O. BC-2, BLOCK-7, K.D.A. SCHEME-5 KARACHI	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994) (To be used for trades for which no specially approved form is in force) CODE NAME: "GENCON" Part I 2 Place and date KARACHI - 12-11-2005
3 Owners/Place of business (Cl.1) SALAH INTERNATIONAL TRANSPORT & TRADING CO. PLC C/O Jordan National Lines for Ship Operations (JNL SO) P.O. Box 212955 Amman 11121, Jordan	4 Charterers/Place of business (Cl.1) IGEN SEA SHIPPING GROUND FLOOR, IFTIKHAR CHAMBERS, HASRAT MOHANI ROAD, KARACHI 74000
5 Vessel's name (Cl.1) MV "FARAH 3"	6 GT/NT (Cl.1) 9123 / 6074
7 DWT all told on summer load line in metric tons (abt.) (Cl.1) 14797.9 ON 8.973 M	8 Present position (Cl.1) TRADING
9 Expected ready to load (abt.) (Cl.1) LAYCAN: 25/30TH NOVEMBER 2005	
10 Loading port or place (Cl.1) 1-2SB(S) 1SP KARACHI, PAKISTAN	11 Discharging port or place (Cl.1) : 1-2SBPA WEST AFRICA AAAA INTN TEMA A/O ABIDJAN A/O LOME A/O CONAKRY A/O COTONOU A/O FREETOWN
12 Cargo (also state quantity and margin in Owners' option, if agreed, if full and complete cargo not agreed state "part cargo" (Cl.1)) FULL LOAD BAGGED RICE SF MAX 52' (13.300 MT)	
13 Freight rate (also state whether freight prepaid or payable on delivery) (Cl.4) USD 42.50 PMT FOS BASIS 1/1 LOME A/O TEMA A/O ABIDJAN USD 43.50 PMT FOS BASIS 1/2	14 Freight payment (state currency and method of payment also beneficiary and bank account) (Cl.4) SEE CLAUSE 28
15 State if vessel's cargo handling gear shall not be used (Cl.5) N/A	16 Laytime (if separate laytime for load. and disch. is agreed, fill in a) and b). If total laytime for load. and disch., fill in c) only) (Cl.6) NON-REVERSIBLE
17 Shippers/Place of business (Cl.6) HASSAN ALI RICE EXPORT CO KARACHI - PAKISTAN	(a) Laytime for loading 2000 MTONS PWWD SHEX EIU
18 Agents (loading) (Cl.6) CHARTERERS AGENT BASIS FREE D/A TO OWNERS	(b) Laytime for discharging 1000 MTONS PWWD SHEX EIU
19 Agents (discharging) (Cl.6) CHARTERERS AGENT BASIS FREE D/A TO OWNERS	(c) Total laytime for loading and discharging
20 Demurrage rate and manner payable (loading and discharging) (Cl.7) USD 7,500/PDPR HDWTSBE (SEE CLAUSE 45)	21 Cancelling date (Cl.9) 30TH NOVEMBER, 2005 22 General Average to be adjusted at (Cl.12) LONDON
23 Freight Tax (state if for the Owners' account (Cl. 13(c))) SEE CLAUSE 49	24 Brokerage commission and to whom payable (Cl. 15) 1.25 % AD COM + 1.25% TO OCEANIC ON F/D/D TO BE DEDUCTED AT SOURCE
25 Law and Arbitration (state 19 (a), 19 (b) or 19 (c) of Cl. 19; if 19 (c) agreed also state Place of Arbitration) (if not filled in 19 (a) shall apply) (Cl. 19) IN LONDON AND ENGLISH LAW TO APPLY	
(a) State maximum amount for small claims/shortened arbitration (Cl.19) N/A	26 Additional clauses covering special provisions, if agreed CLAUSE 27-63

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It is mutually agreed that this Contract shall be performed subject to conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners) SALAH INTERNATIONAL TRANSPORT & TRADING CO. PLC C/O Jordan National Lines for Ship Operations (JNL SO)	Signature (Charterers) IGEN SEA SHIPPING
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Mordhorst Exh. 1

1 Shipbroker OCEANIC SHIPPING & TRADING CO. MARINE PRIDE BUILDING, SUITE # 402, P/O. BC-2, BLOCK-Y, K.D.A. SCHEME-5 KARACHI	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1922, 1978 and 1994) (To be used for trades for which no specially approved form is in force) CODE NAME: "GENCON" Part I 2 Place and date KARACHI - 12-11-2005
3 Owners/Place of business (Cl.1) IGEN SEA SHIPPING GROUND FLOOR IFTIKHAR CHAMBERS HASRAT MOHANI ROAD, KARACHI - PAKISTAN	4 Charterers/Place of business (Cl.1) HASSAN ALI RICE EXPORT COMPANY 1ST FLOOR, COTTON EXCHANGE BUILDING, I.I. CHUNORIGAR ROAD, KARACHI - PAKISTAN
5 Vessel's name (Cl.1) MT "FARAH"	6 GT/NT (Cl.1) 3123 / 6074
7 DWT all told on summer load line in metric tons (abt.) (Cl.1) 14797.9 OR 9.973 M	8 Present position (Cl.1) TRADING
9 Expected ready to load (abt.) (Cl.1) LAYCAN: 25/30TH NOVEMBER 2005	
10 Loading port or place (Cl.1) 1-28R(B) 18P KARACHI, PAKISTAN	11 Discharging port or place (Cl.1): 1-28RPA WEST AFRICA AREA DOW TONK A/O ABIDJAN A/O LOME A/O CONAKRY A/O COTONOU A/O FREETOWN
12 Cargo (also state quantity and margin in Owners' option, if agreed, if full and complete cargo not agreed state "port cargo" (Cl.1)) FULL LOAD BAGGED RICE SF MAX 52' (13.300 MT)	
13 Freight rate (also state whether freight prepaid or payable on delivery) (Cl.4) USD 42.58 PMT FOS BASIS 1/1 LOME A/O TEMA A/O ABIDJAN USD 41.88 PMT FOS BASIS 1/2	14 Freight payment (state currency and method of payment also beneficiary and bank account) (Cl.4) SEE CLAUSE 28
15 State if vessel's cargo handling gear shall not be used (Cl.5) N/A	16 Laytime (if separate laytime for load, and discharge, is agreed, fill in a) and b). If total laytime for load, and discharge, fill in c) only) (Cl.6) NON-REVERSIBLE
17 Shippers/Place of business (Cl.6) HASSAN ALI RICE EXPORT CO. KARACHI - PAKISTAN	(a) Laytime for loading 2000 MTONS PMWD SHEX EU
18 Agents (loading) (Cl.6) CHARTERERS AGENT BASIS FREE D/A TO OWNERS	(b) Laytime for discharging 1000 MTONS PMWD SHEX EU
19 Agents (discharging) (Cl.6) CHARTERERS AGENT BASIS FREE D/A TO OWNERS	(c) Total laytime for loading and discharging
20 Demurrage rate and manner payable (loading and discharging) (Cl.7) USD 7,600/DPDR HDWTSBE (SEE CLAUSE 43)	21 Cancellation date (Cl.8) 30TH NOVEMBER, 2005 22 General Average to be adjusted at (Cl.12) LONDON
23 Freight Tax (state if for the Owners' account (Cl.13(c))) SEE CLAUSE 43	24 Brokerage commission and to whom payable (Cl.15) 1.25% ADCOM TO IGEN + 1.25% TO OCEANIC ON F/O/D TO BE DEDUCTED AT SOURCE
25 Law and Arbitration (state 19 (a), 19 (b) or 19 (c) of Cl. 18; if 19 (c) agreed also state Place of Arbitration) (if not filled in 19 (a) shall apply) (Cl. 18) IN LONDON AND ENGLISH LAW TO APPLY	
(a) State maximum amount for small claims/shortened arbitration (Cl.18) N/A	26 Additional clauses covering special provisions, if agreed CLAUSE 27-33

It is mutually agreed that this Contract shall be performed subject to conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners) IGEN SEA SHIPPING	Signature (Charterers) HASSAN ALI RICE EXPORT COMPANY
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Mordhorst Exh. 2